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MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-433

DONALD C. CHRISTMAN,

Petitioner,

vs.

EDWARD V. HANRAHAN, ANTHONY CORSENTINO, MARSHALL WEINBERG, WILLIAM MILLER and JOSEPH DiLEONARDI,

Respondents.

BRIEF OF RESPONDENTS MILLER AND DiLEONARDI IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondents Miller and DiLeonardi respectfully pray that this Honorable Court deny petitioner's request that a writ of certiorari issue in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit appears at 500 F.2d 65 in addition to Appendix A of the Petition. The unreported memorandum opinion and order of the United States District Court for the Northern District of Illinois appears as Appendix B of the Petition.

QUESTION PRESENTED

Whether petitioner's complaint filed pursuant to §1983 of the Civil Rights Act was properly dismissed for failure to state a violation of constitutional rights where favorable information allegedly withheld and suppressed by respondents was, in fact, presented to the jury and petitioner thereafter was acquitted.

STATEMENT OF THE CASE

For purposes of this brief, the State's Attorney's Statement of The Case is sufficient. Any additional facts deemed relevant will be incorporated in respondents' argument.

ARGUMENT

THE ISSUES IN THIS CASE HAVE BEEN DECIDED BY THIS COURT IN BRADY v. MARYLAND AND THE COURT OF APPEALS CORRECTLY APPLIED THE PRINCIPLES SET FORTH IN BRADY.

Certiorari should be denied in the instant case for the reason that, as the courts below held, petitioner has not alleged a violation of a constitutional right. Under the principles set forth by this Court the alleged attempt by respondents to withhold certain favorable information, although a violation of the right to discovery of such information, did not amount to a violation of petitioner's federally protected right to a fair trial, and thus his complaint based upon the Civil Rights Act failed to state a cause of action. This Court has previously determined that a suppression or withholding of favorable evidence violates principles of due process of law by impairing an accused's right to a fair trial. As the District Court and the Court of Appeals held in the instant case, where the withheld information ultimately reached the jury and petitioner was acquitted, he was accorded a fair trial. Petitioner's contention that under the principles of *Brady* v. *Maryland*, 373 U.S. 83, 10 L.Ed. 2d 215, 83 S.Ct. 1194 (1963) and *Mooney* v. *Holohan*, 294 U.S. 103, 79 L.Ed. 791, 55 S.Ct. 340 (1934), respondents' alleged misconduct effected a denial of due process is merely illusory, and for this reason certiorari should be denied.

Petitioner interprets the decisions of this Court in *Brady* and *Mooney* as holding that the intentional suppression or withholding of evidence is violative of due process, and

therefore, he asserts, his complaint states a cause of action based upon this alleged violation. As the Court of Appeals recognized, petitioner has misconstrued the thrust of *Brady* and *Mooney*. Neither decision held that police or prosecutorial misconduct in the alteration or withholding of favorable evidence *per se* violates due process; both decisions held that such misconduct is violative of due process because it impairs an accused's right to a fair trial:

> "The principle of *Mooney* v. *Holohan* is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair . . . ." *Brady* v. *Maryland*, 373 U.S. at 87.

Hilliard v. *Williams*, 465 F.2d 1212 (6th Cir. 1972), cert. denied 409 U.S. 1029 (1972), held that a §1983 complaint based upon a *Brady* suppression of evidence violation stated a cause of action; however, it is distinguishable from the instant case for the reason that exculpatory evidence there was, in fact, suppressed, plaintiff was convicted and thus was denied a fair trial. The case at bar more closely parallels the situation in *Symkowski* v. *Miller*, 294 F.Supp. 1214, 1216 (E.D. Wis. 1969), wherein the district court dismissed plaintiff's §1983 action, holding that although false testimony may have been given, in light of plaintiff's acquittal "it is difficult to discern how plaintiff's trials were fundamentally unfair or otherwise infringed upon his constitutional rights."

Petitioner mistakenly relies upon *Duncan* v. *Nelson*, 466 F.2d 939 (7th Cir. 1972), *cert. denied* ..... U.S. ..... (1972), wherein plaintiff was afforded an opportunity to prove both mental and physical damages caused by an unlawful interrogation, without regard to the use of the coerced

confession at trial. The court there based its decision upon the fact that the right to be free from coercion has always been embraced within the Fourteenth Amendment. *Duncan* is inapposite to the instant case and was not relied upon by the Court of Appeals below, because, although coercion alone has been held to violate the right to due process, attempted suppression or alteration of evidence, while it is not to be condoned, violates due process only when it leads to a trial which is fundamentally unfair.

Because petitioner has failed to demonstrate a deprivation of a constitutional right to a fair trial, petitioner's recitation of damages caused by respondents' alleged misconduct is totally immaterial. Petitioner cannot seriously suggest that the failure of respondents to communicate the information to him prior to the time it was even requested impaired his constitutional rights regarding indictment or bail. Although respondents' actions may have caused petitioner additional apprehension, as stated above, the District Court and the Court of Appeals correctly held that under the facts of this case, petitioner's complaint did not state a violation of a federal right.

The allegations of petitioner's complaint allege inexcusable conduct on the part of respondents. However, the principles announced by this Court in *Brady* dictate that under the facts here, such misconduct did not result in a trial which was fundamentally unfair. The Civil Rights Act is intended to provide a remedy against official misconduct only when such misconduct impairs constitutional rights. Accordingly, the District Court dismissed petitioner's complaint and the Court of Appeals affirmed.

CONCLUSION

For these reasons, therefore, it is respectfully submitted that the Petition For a Writ of Certiorari be denied.

Respectfully submitted,

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